IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29-3-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.883 of 2006
W.P.M.P.No.1023 of 2006

M. Kolandaisamy ... Petitioner

Vs.

1. State of Tamil Nadu,
rep.by Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.

2. Director of School Education,
College Road,
Chennai - 600 006.

3. The Chief Educational Officer,
Villupuram District,
Villupuram.

4. Headmaster,
Government Boys Higher Secondary School,
Ulundurpet,
Villupuram District. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of mandamus directing the respondents to pass an order accepting voluntary retirement of the petitioner pursuant to the representation dated 24.9.2005 from the due post of the Tamil Nadu Higher Secondary Education service.

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For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mrs.D.Malarvizhi,
Government Advocate

O R D E R

In this writ petition, petitioner seeks a direction to the

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respondents to pass orders accepting voluntary retirement of the petitioner, pursuant to the representation dated 24.9.2005, from the due post of the Tamil Nadu Higher Secondary Education Service.

2. The brief facts necessary for disposal of the writ petition are that the petitioner was appointed as Physical Director (Higher Secondary) on 23.2.1981. According to the petitioner, he had to be promoted as Director of School education, but he was not considered for the said promotion. Hence he made a representation on 15.9.2004 and the same having not been considered, petitioner filed W.P.No.5728 of 2005. This Court by order dated 22.2.2005 directed the respondents to consider the representation dated 15.9.2004 within eight weeks.

3. Subsequently, on 24.9.2005, petitioner made an application for voluntary retirement after giving three months of statutory notice and the said period came to an end on 31.12.2005. The fourth respondent requested the third respondent to consider the case of the petitioner and pass orders on the request of the petitioner by his proceedings dated 3.1.2006, but till date no order has been passed. Therefore, petitioner has filed the above writ petition.

4. Having regard to the uncontroverted facts in this case, when the writ petition was posted for admission on 10.3.2006, the learned Government Advocate was directed to get instructions and the matter was posted on 17.3.2006. Thereafter the case was adjourned to 21.3.2005 and the learned Government Advocate on instructions made her submissions.

5. The learned counsel appearing for the petitioner submitted that the petitioner made an application for voluntary retirement as referred above on 24.9.2005 and the said representation was submitted through the Headmaster of the Government Boys Higher Secondary School, Ulundurpet and also through the Chief Educational Officer, Ulundurpet, but no order has been passed by the respondents either accepting or rejecting the request of the petitioner. According to the learned counsel, petitioner is aged 54 years and he has completed more than 24 years of service and therefore the learned counsel for the petitioner submitted that he is fully qualified to go on voluntary retirement since the requirement is only 20 years of service or completion of 50 years of age.

6. I have considered the rival submissions of the learned counsel for the petitioner as well as the learned Government Advocate. The point in issue is as to whether any separate order accepting the voluntary retirement is required to be passed or not.

7. According to F.R.56(3)(f), if no order is passed within the expiry of the notice period, the voluntary retirement request is

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deemed to have been accepted. It would be useful to extract FR.56 (3)(f), which reads as under,

> "FR.56(3)(f)- The appointing authority shall issue orders before the date of expiry of notice either accepting the voluntary retirement or not. Otherwise, the government servant shall be deemed to have been retired voluntary from service at the end of the period of notice."

8. In the decision reported in (2001) 3 SCC 290 (Tek Chand v. Dile Ram), in paragraph 35, the Honourable Supreme Court held thus,

> "... there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntary retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

As held by the Honourable Supreme Court, if there is no specific rule, which requires acceptance of notice by the respondents herein, as per FR.56, the petitioner is deemed to have been retired voluntarily after the expiry of the notice period. Moreover, admittedly, no refusal order was communicated to the petitioner as in the case cited supra. Therefore the above referred decision fully supports the case of the petitioner in view of FR.56(3)(f), extracted above. Following the above decision, this Court

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allowed similar writ petition in W.P.No.27032 of 2005 by order dated 8.2.2006.

9. Therefore, the writ petition is allowed. The respondents are directed to issue a formal relieving order to the petitioner within a period of two weeks from the date of receipt of copy of this order, indicating that the petitioner was relieved from service from 31.12.2005 on voluntary retirement. Petitioner shall be paid all terminal benefits, as applicable under the rules, within a period of three months from the date of receipt of copy of this order. No costs. Connected WPMP No.1023 of 2006 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

1. The Secretary, Department of School Education,
   Fort St.George, Chennai - 600 009.

2. The Director of School Education,
   College Road, Chennai - 600 006.

3. The Chief Educational Officer,
   Villupuram District, Villupuram.

4. The Headmaster, Government Boys Higher Secondary School,
   Ulundurpet, Villupuram District.

+1cc to Mr.R.Sankara Subbu, Advocate Sr 15658
+1cc to GP Sr 15886

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km/6.4.

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